IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.11509 OF 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNAGAR MUNICIPAL CORPORATION

Versus

SAFAI KAMDAR SANGH

Appearance:

1. Special Civil Application No. 11509 of 2002

MR. H.S. MUNSHAW for Petitioner

MR. M.M. PRAJAPATI for Respondent

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 19/03/2004

ORAL JUDGEMENT

1. This petition is filed by Bhavnagar Municipal Corporation (hereinafter referred to as "the Corporation") being aggrieved of the judgement and order dated 28th February, 2002 in Reference (IT) No.250 of 1991 (Old No.109 of 1989) passed by the learned Member of the Industrial Tribunal, Bhavnagar.

2 This Court issued `Rule' on 30th July, 2003 and recorded in the order as under:

"Mr.Munshaw submitted that the 13 employees, who are the beneficiaries as per the Award, have been regularised in service as per the policy of the Corporation, and such employees are paid washing allowance also. Mr.Munshaw also submitted that, at present, it is not possible for the Corporation to create 172 posts because of financial difficulties."

3. Mr.H.S.Munshaw, learned Advocate appearing for the petitioner, submitted that this Court, at the relevant time, directed him to produce the details of the area and population at the time of the erstwhile Municipality, on conversion of the Municipality into Corporation. The Court also wanted the details of the Drainage and Health Safai Kamdars - set up, along with the increase which took place from time to time. Mr.Munshaw, today, produced on record the relevant information in a tabular form, a copy of which is served to Mr.M.M.Prajapati, learned Advocate appearing for the respondent, Safai Kamdar Sangh.

The learned Advocate submitted that in the impugned judgement and order, it is recorded by the learned Member of the Industrial Tribunal that earlier, there were 172 permanent employees in the Drainage Section, taking note of that, the Corporation is directed to create 78 new permanent posts. The learned Advocate submitted that the Tribunal has exceeded its jurisdiction in directing the Corporation to create new permanent posts. This submission is not required to be considered because the facts revealed from the tabular sheet that even in 1984, there were 250 posts of `Safai Kamdars' in the Drainage Section. Thereafter, 210 posts were increased, totaling to 460. Thereafter, in 1992-93, 110 posts were reduced and as on date, there are 350 sanctioned posts. That being so, the judgement and order of the Industrial Tribunal has become redundant for the simple reason that the Industrial Tribunal has directed to create 78 new permanent posts in addition to 172, that will bring the total to 250 only. This has happened because the information, which was placed by either party, was only to the effect. It appears that at the relevant time, the parties before the Industrial Tribunal have not updated the information and that is why, the Industrial Tribunal is led to pass the impugned order.

4. So far as Demand No.2 is concerned, the same is

not accepted by the learned Member of the Industrial Tribunal, while for Demand No.3, the Tribunal has directed the Corporation to grant status of permanency to 13 workmen, whose names are mentioned. The learned Member of the Industrial Tribunal has directed the petitioner-Corporation that on treating their date of entry to be 13th September, 1985; on completion of first 1200 days, the status of temporary and on completion of further 1200 days, status of permanency along with the benefits of pay scale and other benefits be granted. It is recorded in the order that as mentioned in Exh.29, three workmen have expired and three workmen have left the services and, therefore, qua them, no order is passed.

5. In view of the information placed before this Court, there being many more posts available, an assurance is given by Mr.H.S.Munshaw, learned Advocate for the petitioner-Corporation, that they will implement the judgement and order strictly in accordance with law and will give the benefits against the available vacant posts, as directed.

6. So far as the direction regarding giving the benefit of appointment on the post of `Mukamdam' to the persons named in the order, who are nine in all, of whom, it is stated that two persons are already given appointment as `Mukamdam'. Mr.Munshaw stated that taking into consideration the available posts of `Mukamdam', the benefits will be given on the basis of `seniority 'as directed by the Tribunal.

7. Mr.H.S.Munshaw, the learned Advocate for the petitioner-Corporation, submitted that though it is ordered in the judgement and order to pay Rs.10=00 per month as washing allowance, in fact, Rs.30=00 per month is paid. Mr.M.M.Prajapati, the learned Advocate for the respondent, does not controvert the same.

8. In view of the above factual position, the present petition is disposed of leaving it open that in case, the respondent-Safai Kamdar Sangh has any surviving grievance, it will be open for it to ventilate the same in accordance with law. In view of that, the present petition is disposed of. Rule is made absolute to that extent only. No order as to costs.

(Ravi R. Tripathi, J.)
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